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ABSTRACT

Recommendations made by the Regents of The University of the State of New York and directed to the first session of the 95th Congress are described in the 1977 edition of the Regents series. The report asks that several federal education programs be reviewed, both with respect to their substantive provisions and the administrative patterns of increased federal intervention. These include a major review of the Elementary and Secondary Education Act including careful appraisal of Title I. Several important revisions of other statutes--vocational rehabilitation, library services, vocational education, and education of handicapped children--should be made to assure effective administration and results. Third, the Congress should address excessive requirements of the Veterans Administration affecting colleges and universities concerning veterans' education programs. Fourth, an appropriation should be made under existing legislative authorities for construction and renovation of educational facilities. (Author/MLF)

Federal Legislation and Education in New York State

The University of the State of New York
The State Education Department
Albany
February 1977

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THE UNIVERSITY OF THE STATE OF NEW YORK

Regents of The University *(with years when terms expire)*

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Foreword

As Federal funds for education have increased, the requirements for using them have become more complex, and Federal agencies have become more entangled in the operation of schools, colleges and universities. In the first session of the 95th Congress, several Federal education programs should be reviewed both with respect to their substantive provisions and the administrative patterns of increased Federal intervention.

The Congress should begin a major review of the Elementary and Secondary Education Act including careful appraisal of Title I, the largest single Federal program in elementary and secondary education.

Several important revisions of other statutes — vocational rehabilitation, library services, vocational education and education of handicapped children — must be made to assure effective administration and results.

Third, the Congress should address excessive requirements of the Veterans Administration affecting colleges and universities concerning veterans education programs.

Fourth, an appropriation should be made under existing legislative authorities for construction and renovation of educational facilities. This appropriation can help rehabilitate facilities for more effective energy use and service to the handicapped, while providing a stimulus to the economy which is so important to the President and the Congress.

These recommendations of the Regents are described in this year's edition of the Regents series, *Federal Legislation and Education in New York State*. I join with the Regents in urging consideration of the recommendations by the Congressional Delegation of New York and those of other States, the President, and Executive agencies concerned with education.

Faithfully yours,

Ewald B. Nyquist

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I. INTRODUCTION

During the past two decades, the Federal role in assisting state and local educational agencies, postsecondary institutions and other educational institutions has grown significantly. As Federal support of education has increased, Federal legislation and regulations have become more prescriptive and the Federal "presence" has made a significant impact on state and local educational policy and practice. The receipt of Federal funds is and should be contingent upon compliance with Federal requirements. We question, however, whether requirements upon state and local agencies have become excessive as related to the proportion of Federal assistance available. More important, we question whether recent Federal initiatives have intruded improperly on state and local authority and threaten to upset the historical and constitutional division of local, state, and Federal responsibility for education.

At the beginning of the 95th Congress it is important to be reminded of basic assignments for educational responsibility in these United States. As the President and the Congress consider each of

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Supreme Court Decisions on State Authority for Education

A number of historic United States Supreme Court decisions support the reserved powers of states in the field of public education. In *Brown vs. Board of Education* (1954), the U.S. Supreme Court stated that "education is perhaps the most important function of state and local governments." In 1972, the Court recognized that "providing public schools ranks at the very apex of the function of a state" (*Wisconsin vs. Yoder.*)

The provision of a free public education for all citizens is a state constitutional priority. Public education is mandated by state constitution in 48 of the 50 states, and 49 states have compulsory attendance laws.

While the U.S. Constitution does not guarantee the right of public education (*San Antonio vs. Rodriguez*, 1973), it does address the Federal-state relationship. In 1941, the Supreme Court stated the following on the Tenth Amendment: "The Amendment states but a 'truism' that all is retained (by the states and the people) which has not been surrendered" (*United States vs. Darby*). In *Fry vs. United States*, the Court further recognized that "the Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the states' integrity or their ability to function effectively in a federal system."

However, it is widely interpreted that Congress has the authority to legislate for education programs pursuant to the spending power conferred by Art. 1, Sec. 8, of the U.S. Constitution, and pursuant to the Equal Protection Clause of the Fourteenth Amendment. By the former authority, it has been established that Congress may set conditions upon which money and goods are distributed. The Supreme Court held in *Oklahoma vs. Civil Service Commission* (1947) that the Federal government may "fix the terms on which Federal funds . . . shall be disbursed.

States and localities are not required to accept Federal assistance or Federal funds. If they do so voluntarily, they enter into a contractual relationship and accept the

the several proposals recommending new enactments or renewals of existing acts, the issue of proper jurisdiction must be reviewed. As a part of this Introduction we include a brief note on "Supreme Court Decisions on State Authority for Education." We urge review of that summary.

Responsibility for providing public education constitutionally and traditionally has rested with the states and their local jurisdictions. Historically, as states have accepted Federal assistance, a contractual relationship has developed between state and Federal partners. The Congress has recognized the Federal government's limited authority in education. In 1970, the General Education Provisions Act was amended to include a "Prohibition Against Federal Control of Education." This amendment prohibits the Federal government from exercising any "direction, supervision or control over the curriculum, program or instruction, administration or personnel of any educational institution, school, or school system." The Education Amendments of 1976 extend this provision to all programs in the Education Division of the Department of Health, Education and Welfare.

Recent Federal legislation in education, however, includes provisions that displace state choices in structuring governmental operations and in requirements of educational service. The Federal partner appears to have stepped beyond constitutional bounds.

The 95th Congress must address issues related to existing Federal statutes which impact directly on elementary and secondary education, library services, and vocational rehabilitation. As these programs are reviewed, we urge increased recognition of the state role, responsibility and effort in planning, coordinating, and financing education and a greater recognition of the diversity among states in fiscal capacity, effort, and changing economic and demographic conditions.

In 1977 key decisions must be made on which direction the Federal government is to take in shaping the structure of education. The national concern in education has been a concern for special needs. These special needs must be merged with state and local efforts at the state level. More efficient delivery of Federal education resources can be accomplished if state education agencies are better used to provide the intermediate level services of planning, administering, and evaluating Federal programs in local educational agencies and institutions. A major Federal objective should be expansion of state education agency responsibility for greater educational efficiency and effectiveness.

conditions upon which the assistance is offered. In July 1974, the U.S. District Court for New Jersey found with respect to Federal education programs that "research . . . indicates that all the programs are voluntary on the part of the state of New Jersey, and may be terminated at will by the state" (*New Jersey School Boards vs. Supreme Court of the State of New Jersey*).

There are limits to this reasoning, however. If we assume that Congress has the authority to provide for education programs, certainly this authority should not be construed as an unlimited prescriptive license.

In a 1976 decision on *National League of Cities vs. Usery*, the Supreme Court addressed this very issue. The Court said it had "repeatedly recognized that there are attributes of sovereignty attaching to every state government that may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that matter." Although its ruling in that case was directed strictly to authority granted Congress under the Commerce Clause (Art. 1, Sec. 8), and specifically by footnote expressed no view on the Spending Power or the Equal Protection Clause, the reasoning is applicable to Federal-state relations in education.

At stake here is the question whether "attributes of state sovereignty" are impaired by increasing Federal prescription affecting the states' provision of a free public education. Again, in *National League of Cities*, the Supreme Court warned, "If Congress may withdraw from the states the authority to make those . . . decisions upon which . . . [public service] functions must rest, we think there would be little left of the states' 'separable and independence existence.'" The Court stated decisively that "Congress may not exercise that power so as to force directly upon the states its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made." Then the Court concluded that "such assertions of power, if unchecked, would indeed . . . allow 'the national government (to) devour the essentials of state sovereignty.'"

II. GUIDELINES FOR FEDERAL EDUCATION PROGRAMS

The 95th Congress will be considering options for renewing various programs for elementary and secondary education, libraries and vocational rehabilitation. Although the General Education Provisions Act provides for an automatic one-year extension (to September 30, 1979), the new Congressional budgetary schedule will require swift consideration and renewal in the next Congress. In any amendments to existing legislation, establishment of new programs, and development of regulations, we urge that Federal education programs follow these guidelines:

Principles for Federal Education Programs

1. Elementary and secondary education is the responsibility of the state and the major portion of funding for such education is from state and local resources. Federal funding should supplement these resources and should be directed toward par-

ticular needs in accordance with Federal purposes. Federal legislation should not direct the expenditure of state and local resources.

2. Federal programs should provide services to particular population groups, such as the economically and educationally disadvantaged, the mentally and physically handicapped, the gifted and talented, persons requiring programs of occupational education, and children in need of early childhood education programs.
3. Federal programs with similar purposes serving the same population groups should be consolidated to assure program consistency and to provide administrative efficiency. Where programs are consolidated, state and local administrative agencies should have flexibility to use funds within the broad purposes of the consolidated act and not be constrained by provisions for each former separate program.
4. Federal funds should be provided to the states in a manner that will both permit and enhance the equalization of opportunity among school districts in a state by means of the combination of Federal with state and local funds.
5. Although Federal funds should assist in equalizing educational opportunities and outcomes for individuals among the States, this does not necessarily mean equal dollars per pupil to all states. The factors of regional difference in cost of services, tax effort, and the fiscal capacity of the state related to the overall commitment to expenditure for social programs must be considered in the Federal distribution of funds.
6. In addition to support of educational operations as indicated above, Federal funds should be used for research and development activities which require a critical mass of resources not available to a single state, local school district or institution; and for educational personnel development through aid to the states and, in turn, to local districts, for both preservice and inservice training in educational institutions and in teacher centers.

   Educational research and development funded by the Federal government should be conducted cooperatively between Federal agencies and those state agencies with demonstrated capacity. Research and development program efforts must link Federal, state, local, school, and classroom personnel in a vertical relationship to assure that these efforts will have a direct impact on instruction.
7. Once appropriation levels for Federal education programs are set for a fiscal year, they should not be altered by administrative deferrals or rescissions.
8. Federal funds should be administered through state education agencies in order that these funds can be linked with state and local resources for a coordinated support of education. A larger percentage of Federal funds should be used for developing state plans for the use of funds, administration of funds, monitoring of programs, and for evaluation of programs. Federal regional services offices should be discontinued in order to provide a direct relationship between the states and the U.S. Office of Education in the administration of Federal programs. In administering Federal funds, the states should require that local school districts have district *and* school plans for the use and evaluation of Federal funds.

The Regulation/Rulemaking Process

In the last year, the Department of Health, Education and Welfare has taken some major steps forward in reforming the tedious regulation and rulemaking process for Federal programs. Within the Office of the Secretary, there has been established an Office of Regulatory Review which has a twofold purpose: (1) To improve the process by which new regulations, either proposed or final, are developed, cleared and reviewed; and, (2) To review existing regulations to recommend which ones can and should be modified, simplified, or eliminated. In addition to acting as a coordinator among the rulemaking efforts of the various agencies and as a conduit for new ideas, the Office of Regulatory Review is charged with the task of evaluating methods by which HEW's regulation formulation process can involve greater public participation.

Shortly after the establishment of the Office of Regulatory Review, the Secretary of Health, Education and Welfare issued a comprehensive statement of policies and procedures regarding the development and issuance of regulations. The policies included such positive elements as permitting interested outside groups to have an impact on the decision-making process in its early stages; utilizing channels of communication in addition to the *Federal Register* in order to reach as many interested persons as possible; holding public hearings either before or after proposed regulations are published; and allowing the disclosure of draft regulations prior to their publication in proposed form. In addition, the Secretary urged that language understandable to the general public, as opposed to bureaucratic/agency jargon, be used throughout the entire process. We believe these procedures mark a major step forward in opening the process to public participation.

The timing of regulations is another critical concern. There have been several occasions when state agencies have been required to develop state plans on the basis of proposed regulations. This practice inhibits sound planning and creates program disruption.

The Office of Regulatory Review developed a schedule for final regulation publication in conjunction with the reformed comment process. The schedule called for 400 days. The Education Amend-

more recently amended Section 431(g) of the General
ovisions Act to require the publication of final regula-
240 days of enactment into law of any applicable pro-
Education Division. We agree with the necessity of
on formulation. The Department of Health, Education
must adhere diligently to the new schedule so it will
operation of the new procedures to open rulemaking
public comment.

he Paper Blizzard

g task related to the regulatory process is analysis and
isting regulations to determine how they might be
reduce paperwork. The paperwork burden imposed by
ations upon state and local education agencies and in-
postsecondary education continues to grow. Require-
collection and recordkeeping as part of state and local
of Federal programs constitute a blizzard of pa-
re is a particular problem here for small and poorer in-
with regard to modest programs in which the adminis-
overwhelms the project. An urgent need exists for
of regulations with the objective of minimizing pa-
urge that the coordinated efforts of the Office of Reg-
w, the Interagency Task Force on Higher Education
reau, and the Paperwork Commission be brought to
roblem.

State was instrumental in urging enactment of the
aperwork" amendment to Title IV, General Education
the Education Amendments of 1976 (Sec. 406(g)). We
ovision will help to control the paper blizzard. Con-
should be directed towards eliminating overlap and
imizing requirements generated by existing regulations
and reporting data.

ort of Nonpublic Education

fiscal plight which afflicts public education is shared
blic sector. In recent times, parents of children attend-
schools and the administrators and teachers in those
ave sought assistance from Federal and state govern-
of funds and services. The Regents of New York State
esponsibility for the education of all children. In fulfill-
bligation, the Regents have endorsed governmental assist-
upils in nonpublic schools within certain guidelines.

Legislation to aid children in nonpublic education should reinforce and not jeopardize the welfare, stability, and adequacy of support for public schools.

Such legislation should be effective in providing meaningful opportunities to children of lower income families who, of all groups, have the least option in determining when and where their children are to be educated, and to middle-income families whose resources are strained by high tuition costs.

Public support of nonpublic education must be sufficient to maintain a pluralistic system adequate in quality and economical in operation, but not so excessive as to jeopardize the independence of the nonpublic school or to dry up sources of private and philanthropic support, or to encourage organization of new schools with the purpose or effect of increasing racial separatism.

Such legislation should require accountability for public funds received, should contain safeguards against racial and social class isolation in the nonpublic schools, should provide for no use of public funds for any sectarian purpose or function, and should provide that admission policies be nondiscriminatory except where permitted by law on the basis of creed.

All nonpublic schools receiving public funds must be required to meet standards of quality prescribed by state and local authority. The Federal government should not intervene in setting such standards.

Finally, such legislation must conform to the principles of constitutionality already enunciated by the courts or have reasonable prospects of being approved by the courts in the event of a challenge to its constitutional validity. We commend the Federal government on the programs and services which bring educational benefits to children in nonpublic schools; we urge not only proper vigilance against what may be constitutionally impermissible, but that same vigilance to assure the delivery of those services judged legitimate and necessary.

III. THE BUDGETARY PROCESS

Like other areas of Federal-state educational interaction, the budgetary process is becoming increasingly complex. The enactment of the 1974 "Budget and Impoundment Control Act" (P.L. 93-344) marked a new era of Congressional involvement. However, Title X, designed to curb arbitrary presidential impoundments of appropri-

ated funds, contains defects that must be revised to permit state planning and implementation of appropriations without Federal deferral and rescission prerogatives.

Title X provides that the President must submit to the Congress a request for a rescission of funds which the Congress has a 45-day waiting period to approve. If no Congressional action is taken during that time, the rescission request is considered denied. The procedure has served to diminish the number of drawn out lawsuits which were previously necessary to secure the release of impounded funds. Indeed, in 1975 the Congress approved only some 15 percent of the funds the President proposed to rescind.

Unfortunately, the 45-day waiting period has evolved into a protracted impoundment period, often resulting in serious program damage. The President has the ability to withhold funds proposed for rescission until the Congress passes a bill rescinding the funds or until the end of the waiting period, whichever comes first. Further, the 45-day period does not include days on which the Congress is on *sine die* adjournment, or any recess over three days. Also, the President and the Office of Management and Budget have up to 30 days in which to apportion program money to appropriate agencies for each quarter. These factors allow the President to employ delaying tactics in the release of funds, which in some cases have resulted in impoundment periods of over 100 days. In other cases, the President has been able to submit rescission proposals timed so that the budget authority of the program expired before the end of the waiting period.

Another deficiency in the Act is the President's ability to issue "chain-deferrals." Title X provides that the President may defer the release of funds unless one house of Congress disapproves. However, deferrals can be issued continuously in a chain, up until the end of the fiscal year at which time all funds must be released. Similarly, the Justice Department has determined that the President may make a deferral and follow that with a rescission, the 45-day waiting period still being applicable to the rescission. Undoubtedly, these procedures can cause much uncertainty and disruption, and are not inducive to sound program planning and management practices.

One last noticeable deficiency involves the enforcement powers of the Comptroller General. On July 1, 1976, the President withheld some education funds, but failed to notify the Congress until a rescission request was made on July 28. Upon investigation, the General Accounting Office (GAO) found that the impoundment had, in fact, begun on July 1 and that the President had violated the spirit

of the "Budget and Impoundment Control Act." In this case, the 45-day period did not expire until September 29, one day before the end of the Transition Quarter when the budget authority for some funds was expected to lapse. The GAO maintained it had no authority to enforce that the 45-day waiting period should have begun on the earlier date, July 1. In addition, the GAO is prohibited from taking any legal action for a 25-day waiting period, making it unlikely that meaningful legal action could be completed before the end of a 45-day period. In a letter to Senator Hollings, the Comptroller General has written, "Assuming that the President releases the unrescinded funds on the 46th day, the case would likely be considered moot by the court and dismissed before resolution of the issue could be had."

Recommendation for Amendment

In the 94th Congress, at least three major bills with some 90 cosponsors had been introduced to amend Title X of the "Budget and Impoundment Control Act." We urge the next Congress, and in particular the House Budget and Rules Committees, to act swiftly and positively on legislation designed to remove the deficiencies described above.

Such legislation should provide: (1) either House of Congress may, by simple resolution, disapprove any rescission request within the 45-day rescission period; (2) "Chain" rescissions or deferrals should be prohibited. The 45-day period should start from the date of the actual impoundment of funds, and its calculation should somehow adjust for the problems of the *sine die* adjournments or more than three-day recesses of the Congress; and (3) the enforcement authority of the Comptroller General should be clarified, and the 25-day waiting period on filing suits against the Administration should be reconsidered.

IV. ALLOCATION OF FUNDS AMONG THE STATES

Current formulas for Federal aid are based on historically developed criteria that produce inequities when applied in the context of the 1970's. The various factors in a formula are usually based on certain demographic or economic features, the selection and combination of which is key in determining the flow of resources from

Federal to state levels. Such factors have included, for example, variations on population, general or special, per capita income, state and local expenditures, and various combinations thereof in mathematical equations. As economic and demographic features change over time, however, periodic adjustment, or a total review of these factors is required in order to assure effective program impact.

An historical review of the development of Federal allocation formulas indicates population measures as the dominant factor from the first modern grant in 1862, under the Morrill Land Grant Act, up through the first third of the 20th century. During the 1930's, collapsing state finances marked a shift toward including state expenditures as a factor. The post-World War II period witnessed an expansion of Federal assistance in areas of health, education and welfare, which generated many of the formula factors still existing today.

The Hospital Survey and Construction Act of 1946 reflected a major change in Congressional thinking that was to burden high per capita income states to this day. The allocation formula in that Act determined need by comparing state per capita income with the per capita income of all states. At that time, there was wide variance in state per capita incomes, with a notable lack of resources in sparsely populated states. The Federal government was seen as the common denominator for redistributing the wealth of the Northeast and stimulating the economy of the South and West.

This philosophy was carried forward in the 1954 amendments to the Vocational Rehabilitation Act of 1920. Still in use today, the formula relies on two factors: general population and state/national per capita income, with a "squaring" of the latter's inverse ratio. This creative twist resulted in a sharp skewing of funds to low per capita income states. The intent was to give these states added stimulus and encouragement in what, at that time, was their slow development of vocational rehabilitation services.

The Advisory Commission on Intergovernmental Relations has identified over 40 Federal programs which use income or some other financial indicator as a formula factor. In addition, over 103 Federal programs use some measure of population as a criterion, 52 of which use special population factors. Clearly, these variables play a large role in what has become an increasing Federal involvement not only in education, but in our everyday lives. Nationwide population trends and changing economic patterns dictate a reconsideration of many of these variables, and corrective measures to meet the new needs of present conditions.

The South and the West, historical beneficiaries of revenue transfers, are experiencing unprecedented growth and prosperity, while

the Northeast is suffering from sharp declines in population and indicators of economic growth. The table below is illustrative.

TABLE I

PERCENT CHANGES IN TOTAL PERSONAL INCOME, PER CAPITA INCOME, AND POPULATION OF THE U.S. BY REGION: 1950–1971[1] (BASED ON 1967 DOLLARS)

STATE	% Change Total Personal Income	% Change Per Capita Income	% Change Population
United States	133	72	36
New England	120	70	29
Mideast	111	66	27
Great Lakes	114	61	33
Plains	100	71	17
Southeast	175	109	32
Southwest	160	76	48
Rocky Mountains	139	62	48
Far West	177	55	79

[1] *Source:* U.S. Department of Commerce, Bureau of Economic Analysis.

Less-than-average percentage growth is found in the regions of New England, the Mideast, the Great Lakes and the Plains. By contrast, greater-than-average growth is found for the most part in the regions of the Southeast, Southwest, Rocky Mountains, and the Far West. A relationship in the relative change of population and income is found as (1) the labor force moves, on balance, to locations where income and job opportunities are expanding, and (2) retirees, when moving, carry with them retirement income, in turn, inducing additional jobs and income in the areas of net immigration.

In April of 1974, the U.S. Department of Commerce, Bureau of Economic Analysis, projected trends into the 1990's. Regions with increasing shares of income include the Southeast, Southwest, and the Rocky Mountain States; regions with income trends close to the national average include the Far West and New England; and regions with pronounced declines include the Mideast, Great Lakes, and the Plains. In tracking these economic projections in April of 1976, the bureau noted that recent data for 1971–75 indicate that

states projected to grow slowly grew even more slowly in this period; and states projected to grow rapidly grew even more rapidly. Growth states benefited from the continuing geographic dispersion of manufacturing, from sharp increases in the demand for domestically produced energy, and from unusually good years of agricultural income—all of which supported increased levels of activity in major-service-type industries and construction.

Slow growth states, particularly New York, Rhode Island, Vermont, and Massachusetts, have not picked up in economic recovery from the recession. The bureau noted that . . .

> The New York economy, which was overestimated throughout the 1971–75 period, did not return to its long-term growth path following the 1970 recession as business establishments continued their exodus, particularly from New York City. Earnings from the important finance and trade industries, as well as from other service-type industries, have continued to be unexpectedly low. In addition, New York's manufacturing earnings which, prior to 1970, were somewhat cycle-resistant, have been consistently overestimated.

Population trends are also skewed at this period. For example, between 1970 and 1974, New York and Florida had the greatest percentage change in population: New York's drop in percentage of the total national population was a little less than seven times the national average percentage change, while Florida's gain was more than eight times the national average change. Of the 19 states which lost population in this period, more thant three-quarters are located in the Northeast and Midwest.

These recent trends indicate a larger-than-expected redistribution of economic activity and population between the Northeast Great Lakes industrial states and a group of Western and Southern states. In the slow growth, industrial, urbanized states, the implications for education are evident: less resources with increased costs per pupil due to inflationary pressures in higher-than-average cost-of-living areas. This finance problem is compounded by recent court decisions, legislative pressures, and Federal prodding to equalize education expenditures among districts, and to provide adequate special education services for those with limited English-speaking ability and students with handicapping conditions.

At the same time, New York (as well as other Northeast states) still contributes more to elementary and secondary education than many Southeast states. The following table indicates figures for selected states.

New York, New Jersey and Connecticut contribute more than three-quarters of their total education expenditures to the elemen-

TABLE II

PERCENTAGE EXPENDITURES FOR EDUCATION: ELEMENTARY/SECONDARY, POSTSECONDARY AND STATE AVERAGE PER PUPIL EXPENDITURES[1] FOR SELECTED STATES

1971–72

(In Millions of Dollars)

State	Combined Elem/Sec & Postsec	Elem/Sec	%	Postsec	%	1974–75 PPE
New York	7,055.8	5,616.7	79.6	1,439.1	20.4	2,005
New Jersey	2,222.8	1,861.1	83.7	361.7	16.3	1,565
Connecticut	948.0	792.1	83.6	155.9	16.4	1,507
National	62,531.7	46,670.4	74.6	15,861.3	25.4	1,255
Idaho	191.6	127.0	66.3	64.6	33.7	910
Alabama	731.5	484.1	66.2	247.4	33.8	871
Kentucky	733.6	491.0	66.9	242.6	33.1	864

[1] *Sources:* U.S. Department of Commerce.
U.S. Office of Education.

tary and secondary area, well above the national average. By contrast, Idaho, Alabama, and Kentucky are below the national average in their contributions to elementary and secondary education, choosing to concentrate more dollars on postsecondary education. The variations in state average per pupil expenditures follow suit.

Some Federal allocation formulas, however, actually have the effect of penalizing those states that make a greater effort in elementary and secondary education. For example, the ESEA, Title I, formula fixes a ceiling on states with average per pupil expenditures above 120 percent of the national average per pupil expenditure. While enrollment is declining, per pupil costs continue to rise. The Federal education dollar in states with per pupil expenditures above the national average has less impact than in other states. Hence, these states are being penalized with fewer dollars. These are the same states also which are suffering economically, to the benefit of states which put forth less effort.

As a redistributor of wealth, the 95th Congress must review and revise present anachronistic distribution policies. Following are a number of guidelines which should be taken into consideration:

—Population figures, both special and general, should be recent. Where an allocation formula distributes funds below the state level and where updated counts below the state level are not available at the Federal level but are available by state, the funds should be distributed to the state level. The mid-decade census legislation seeks to alleviate this problem, but it does not take effect until Fiscal Year 1985.

—Current population formulations are not objective. That is, definitions of target population, the manner in which needy persons are counted, and the data base used detract from objectivity. Extensive legislative efforts must be focused on the development of an official poverty measure. The necessity for the development of a single national poverty measure is dictated by inequity, redundancy and confusion in current legislation. Presently, a single piece of legislation may contain both an allocation formula for distributing fixed program funds and eligibility criteria for determining which individuals are entitled to assistance. Moreover, entirely different poverty measures may be used in various stages of one program. Even the widely used Orshansky Index is not uniformly applied. Thresholds are modified by multiplicative factors or by the inclusion of recipient characteristics as eligibility criteria to avoid penalizing some states. An official poverty measure is essential for adequately determining public policy, setting program goals, and evaluating program success. Such a measure would allow federally funded programs to identify target populations in a uniform manner while avoiding duplication, facilitating program consolidations, cutting Federal expenses, reducing state and local redtape, and enhancing program effectiveness. A committee of nonpartisan experts should be convened to formulate this measure. Special attention should be given to the development of objective scientific standards of need for food, shelter, medical care, and other essential elements of expense and their combination with current price and income data reasonably comparing poverty levels both geographically and over time. New population definitions and poverty cutoffs should be produced. Legislation should be revised uniformly to incorporate these measures.

—A national poverty measure must provide for geographic equivalence. Currently, measures such as the Orshansky Index do not recognize geographic need differences. The development of existing data sources is necessary to provide sufficient sample size and quality required to support a measure of geographical equivalence. Analyses of geographic cost differences and major expenditure categories for several types of families and income levels within each state should be undertaken. Attention should be given to variations caused by regional and urban-rural differences and climate-attributable increases in expenditures. The formerly used Consumer Price Index should be discarded since it measures only changes in base prices in each city over time, rather than absolute price differences among areas. The geographic sensitivity of the Federal Consumer Expenditure Surveys and inclusion of geographically sensitive pricing surveys with the Bureau of Labor Statistics price collection programs should be investigated in order to develop adequate geographical weightings. This information could be used effectively in conjunction with low-income consumption data. The argument that present data techniques prohibit the combined resources of Federal, state and local governments from developing weightings is unacceptable.

—Provisions for updating the measure should be incorporated in its development. A method of annually updating the measure should be developed in order to accommodate changing economic conditions, population shifts, changes in population conditions and other important referents. The Consumer Price Index should be eliminated as an updating measure because it is unresponsive to changes in consumption patterns, reflects mainly middle-class purchases, and cannot be used to study intercity differences. Instead, attention should be focused on revision and recombination of: the level of nutrition scientifically necessary to good health, the multiplier relating total income requirements to food costs, the appropriateness of before-tax or after-tax income, the threshold for representative family types with adjustment cutoffs for large and small families, geographical influences on pricing patterns and necessary level of family expenditure. Both weighting and updating should focus on prices affecting the poor, rather than the middle class.

—In the use of income and other financial data, Federal formulas should take into account fiscal capacity and effort, remove

penalties for effort, and prohibit disincentives to increased effort. Application of a tax effort index should be in more Federal programs. In addition, where per capita income is presently used, disposable per capita income should be substituted. Disposable per capita income is income less all taxes, leaving the real income individuals have for purchasing and investment.

V. ELEMENTARY AND SECONDARY EDUCATION ESEA, TITLE I

In developing a comprehensive set of legislative changes regarding pupils with special educational needs under ESEA, Title I, we will focus on four major areas: formula inadequacy, difficulties at the operational level, problems of evaluating effectiveness, and the need for an expanded state role in Title I implementation.

Formula Inadequacies

Formula distribution of ESEA, Title I funds presents problems both in the state-Federal partnership and on an intrastate level.

There were a number of developments in the early 1970's which warranted review and revision of the Title I distribution formula. The 1970 Census data on poverty revealed major shifts in low-income populations which impacted heavily on the distribution pattern of Title I funds. In addition, the count of children in families on AFDC grew from 10 percent of the total Title I children in FY 1966 to more than 60 percent of the total in FY 1974. Both developments caused an increased distribution of funds to metropolitan areas. Major conflicts developed among cities and states over proposed adjustments in the formula to compensate for these changes.

The formula that was adopted in 1974 has major flaws. It includes an unequitable measure of poverty, lack of updated counts, and a penalty against high effort states. The formula has produced a reduction of funds, from FY 1974 to FY 1976, for a number of the nation's largest cities. The following table indicates the total dollar and percentage reductions in this period suffered by 19 cities. During this period, total national appropriations for the program *increased* 10 percent.

These reductions result from the following factors in the present formula:

1. The use of the Orshansky poverty index as a method of determining low-income levels below which families are considered poor;

TABLE III

ASSISTANCE FOR EDUCATIONALLY DEPRIVED CHILDREN

ESEA, Title I [1]

City and State	1974	1976	Difference 1976–74	% Dec. 1976–74
Atlanta, GA	$ 5,391,804	$ 4,835,368	$ −556,436	−10.3
Boston, MA	8,119,262	7,423,747	−695,515	−8.6
Buffalo, NY	7,801,209	5,917,235	−1,883,974	−24.1
Camden, NJ	4,419,873	3,041,861	−1,378,012	−31.2
Charlotte, NC	2,531,404	2,296,957	−234,447	−9.3
Chicago, IL	49,196,646	45,507,048	−3,689,598	−7.5
Cleveland, OH	11,271,775	7,766,648	−3,505,127	−31.1
Des Moines, IA	1,329,358	1,235,488	−93,870	−7.1
Gary, IN	1,979,478	1,594,800	−384,678	−19.4
Los Angeles, CA	30,866,922	26,814,295	−4,052,627	−13.1
Louisville, KY	4,125,219	3,859,019	−266,200	−6.5
Minneapolis, MN	3,815,743	2,947,797	−867,946	−22.7
New York, NY	161,847,717	117,663,003	−44,184,714	−27.3
Newark, NJ	11,299,168	9,830,951	−1,468,217	−13.0
Philadelphia, PA	28,567,577	25,366,862	−3,200,715	−11.2
Rochester, NY	5,377,643	3,705,385	−1,672,258	−31.1
St. Paul, MN	2,029,243	1,745,640	−283,603	−14.0
Seattle, WA	2,465,561	2,092,963	−372,598	−15.1
Winston-Salem, NC	1,859,529	1,413,594	−445,935	−24.0

[1] *Source*: U.S. Office of Education.

2. The diminishing proportion of AFDC counts in the formula;
3. The lack of updated poverty figures at the county level between decennial census counts;
4. The 120 percent ceiling on the State average per pupil expenditure used in the payment rate of the formula;
5. The new definitions used to count migrant children, resulting in an increasing portion of Part A funds for the migrant program, to the loss of the local education agency portion of Part A; and
6. The phaseout in FY 1975 of Part C, special grants to urban and rural schools with the highest concentrations of low-income children.

The present formula has two parts: a poverty count and a payment rate. The poverty count consists of children age 5–17 in poor families as defined by the Orshansky poverty index applied to the 1970 Census count, and two-thirds of the children from families re-

ceiving AFDC payments exceeding the Orshansky poverty figure for a non-farm family of four. Because 1970 census data is used together with current AFDC data, there is a gap in the count. The poverty line used for a non-farm family of four is updated annually according to rises in the Consumer Price Index. Also counted are children institutionalized because of neglect or delinquency, handicapped children, and migratory children.

The payment rate is set at 40 percent of a state's average per pupil expenditure, the expenditure factor not to be less than 80 percent nor more than 120 percent of the national average per pupil expenditure. Each county is guaranteed no less than 85 percent of its previous year's allocation.

The Orshansky poverty index represents a method of determining low-income levels below which families are considered poor. The poverty levels are varied by: size of family, farm or non-farm residence, and whether the head of household is over or under 65 years of age. Weaknesses in the use of this index are twofold: (1) validity of the actual poverty income figures as measures of poverty, and (2) the lack of updated population statistics corresponding to the poverty levels.

The question of validity of the Orshansky Index as a determinant of poverty in the U.S. is a problem characteristic of various poverty measures used by the Federal government. There is no one poverty measure which meets all the criteria necessary for a valid index. Indeed, the selection of criteria is a public policy, judgmental or value-laden decision. For example, despite the farm/non-farm variation, the Orshansky poverty levels do not take into account differences in the cost of living in various parts of the U.S.—nor are they varied by rural/urban or suburban/central city residence. As a result, a non-farm person living in a rural area is counted the same as a person living in a central city. As the U.S. farm population has been decreasing, the farm/non-farm variation is merely a token distinction relative to the actual number of poverty persons affected by cost-of-living differences.

In addition, the actual dollar values are based on food alone, and do not take into account other necessities such as shelter, transportation, medical services, and clothing. This is an essentially critical point for city dwellers who experience exceptionally high costs. Thus, it can be concluded that when used to determine minimum income needs of the poverty population, Orshansky understates poverty conditions in high cost-of-living areas.

A major difficulty in using the Orshansky census count lies in the absence of updated population statistics corresponding to its poverty

levels. Although the poverty levels are updated annually according to the rise in the Consumer Price Index, the population counts by state and county are available only from each decennial census. The recent mid-decade census legislation does not take effect until 1985. Furthermore, the annual Current Population Surveys give only population figures for the U.S. and its regions in the following categories: farm/non-farm, metropolitan/non-metropolitan and inside central cities/outside central cities. Such estimates are not made at the county level, which is a key factor for the Title I formula.

It is important to note that the Census Bureau has reported that the 1970 census missed counting an approximately 5.3 million persons in the U.S., most of whom are believed to be poor minorities in the large cities. In addition, a recent HEW report entitled, "The Measure of Poverty," indicates that two estimates were made in 1973 of the number of school-age children in poverty by the Census Bureau and by the Economic Analysis Division. Applying their estimates to the Title I formula showed a shift in distribution in favor of the large industrial states, due to an increase in the poverty population in these states during the period 1969–73. The report stated:

> This change undoubtedly reflects the fact that the slow economic growth experienced in the United States between 1969 and 1973 had a much greater negative impact on the large industrial states than it had on the smaller ones. As a result, relatively more of the Nation's poor children in 1973 were located in the large states than was the case in 1969. *There is no logical basis for retaining the 1970 census count of children in poverty in the allocation formula.* (emphasis added)

Indeed, specialists in HEW have noted that counts of families on AFDC have two distinct advantages over the Orshansky-based counts: (1) They are provided county-by-county on an annual basis; and (2) They incorporate geographic/cost-of-living differences in the eligibility standards set by each state. Unfortunately, the eligibility standards vary so greatly that a distribution of Title I funds based on AFDC alone would be too far unbalanced. On the other hand, the current formula takes the extreme opposite position and diminishes the emphasis on the AFDC counts. The formula includes two-thirds of these children whose families receive payments in excess of the poverty level for a non-farm family of four as updated annually by the Consumer Price Index. In 1969, this figure was $3,750, but in 1976, it was $5,038, and it is projected at $5,500 for 1977. In most states, the AFDC payment rates have not increased commensurately with the rises in the Consumer Price Index. Thus, the relative count of children from this category for the Title I formula is decreasing.

As the proportionate weight of this factor in the formula decreases, the relative participation in most large industrial states decreases, although the amount of decrease is cushioned by the 85 percent hold harmless provision. Within states where the formula is applied to school districts, the aid shifts from urban school districts to central and rural school districts.

Another element to the current formula is a limitation of 120 percent on state per pupil expenditures above the national average and a floor of 80 percent of the national per pupil expenditure for states below the national average. The 120 percent ceiling serves to reduce the allocations to some states and penalizes those states which have made a greater contribution in their spending for elementary and secondary education. The 80–120 mechanism redistributes the funds which would otherwise go to the high expenditure states to the below national average expenditure states, on the premise that high per pupil expenditures necessarily connote "wealth." Traditional thinking on Federal redistribution policy has served to support this argument. Unfortunately, however, it perpetuates the phenomenon whereby those states spending less than the national average per pupil expenditure still receive more per student than they are actually contributing (state and local effort combined). States such as New York with their own compensatory education programs, which result in higher per pupil expenditures than the national average, are not rewarded for increased effort.

One other aspect to the present Title I program which has caused a reduction of funds to jurisdictions with large concentrations of low-income children is the phaseout in FY 1975 of Part C. In FY 1974, $50 million was allocated under this part, and in FY 1975, $38 million was allocated. This part authorized grants to those local education agencies with a concentration of Title I eligibles equal to 20 percent of the school-age population, or at least 5,000 eligibles who constitute 5 percent or more of the total enrollment. The program was eliminated and funds consolidated under Part A because of reported computational complexities, difficulties in data collection processes, and high administrative costs. However, where one of the goals of Title I is to serve areas with concentrations of low-income children, and where the consolidation has caused a dispersion of funds away from these areas, policy and practice would appear incongruous.

Finally, the new method in Title I used for obtaining counts of migrant children has resulted in increased counts of children. In the case of one state, in a three-year period the dollar increase for the program exceeds 2,000 percent. In FY 1977, the count of children

formerly eligible, but whose families have stopped migrating and are eligible for five additional years, represent approximately 29 percent of the total count of migrant children receiving payment. Nationally, the amount of funds for this program has increased over 67 percent from FY 1974 to FY 1977. During this same period, its percentage share of Part A has increased from 4.7 percent to 6.5 percent. This has resulted in less funds for the local education agency portion of Part A.

Current defects in operating principles of intrastate distribution of funds must be corrected to eliminate disequalization.

Principles behind the allocation process purport to ensure that districts with the most need receive the most funds, and that the most needy students in each district receive services. Thus, only pupils in target area schools in which concentration of poverty pupils exceeds the district average, pupils whose educational need is greater than district criteria, and who attend eligible schools are eligible for services. The allocation process bypasses the state and attempts to allocate directly to a local education agency.

As a result, some schools must demonstrate substantial concentrations of poverty youngsters before receiving funds, while a considerably smaller number is required of other districts under present procedures. Most students in high poverty district schools would qualify for compensatory services if they attended low poverty district schools. Sufficient funds do not exist to service all schools.

Although target formulas ensure that all local education agencies are eligible for funds, they do not provide that within a state pupils who are similarly situated according to poverty status or educational need will receive service. The current procedure of bypassing the state to the county level does not allow equalization within a state.

Formula Recommendations

1. The current formula allocates funds at the county level, with sub-county allocations carried out by state education agencies under USOE approval. The allocation should be shifted to the state level. State education agencies then would allocate funds on the basis of the most current counts of children needing services.
2. School building allocations should include a "concentration factor" to assure that sufficient funds are provided to achieve significant educational results. Provision should be made for differences in the cost of services in various geographical areas (particularly urban). The concentration factor should be expressed as a percent of the direct instructional cost per pupil.
3. The present 120 percent limitation on state per pupil expenditure should be eliminated.

4. The 40 percent rate should be dropped to 30 or 20 percent to bring more equity between the amounts of money used for migrant children and the amounts used for children with similar needs in local school districts. However, other alternatives to the migrant education program might also be explored, such as use of a uniform determination system among states.
5. Where state programs are similar to Title I, the Federal government should allow the programs to compliment each other without major audit problems.
6. Current Federal poverty measures are deficient. Congress must encourage and direct a combination of Federal agencies to develop workable criteria and data acquisition techniques to provide more equitable treatment of poor families in densely populated jurisdictions. Such methods should include standards of need for non-food expenses and market basket determinations, taking into account geographic variations in the cost of living. Data collection techniques should allow for annual updating with changing prices and population patterns.

   Since the mid-decade census legislation does not take effect until 1985, alternative counts of children either eligible or participating should be explored for short-run use in the Title I formula.
7. The present formula for Title I allocation does not assure that students equal in poverty status and educational need will receive services, because the allocation standard is the level of concentration of target pupils in a particular local education agency. The average concentration for all local education agencies in a state should be used as the cutoff point for eligibility determination for each school district. Present standards may result in insufficient funds for all schools in a district and in discrimination against urban areas. Extra weights should be assigned in the county and subcounty allocation formulas to account for the heavier concentration of target pupils in some local education agencies and increases in Title I funding should be directed toward these local education agencies.

Difficulties on the Operational Level

The Prevalent ESEA, Title I, Project Model—For a variety of reasons, local districts use the supplementary, remedial "pull-out" model in using Title I funds. In this model, the students receive a "base" program in a given subject (e.g., reading or mathematics) from the regular classroom teacher. In addition, these students leave the regular classroom for remedial instruction. This means that the educationally disadvantaged students receive two periods of instruction in that subject area. The remedial instruction is provided by the Title I remedial teacher or specialist with possible assistance from paraprofessionals.

The reason this model is generally used stems from the Title I legislation which states:

1. That financial assistance is to be provided for programs or projects which contribute particularly to "meeting the special educational needs of educationally deprived children." The students most in need must benefit and not other students.
2. That the ESEA, Title I, resources are to be used for the "excess costs of programs and projects which are designed to meet the special educational needs of educationally deprived children." The funds must be traceable directly to only the selected students.
3. That "Federal funds made available will be used . . . as to supplement . . . non-Federal resources for the education of pupils in programs or projects . . . ." This has led to Federal requirements that comparability be established among buildings before using Title I funds and to an interpretation of "supplementing" within a target school. Thus, supplementing within a school building means that a "base" program must be provided to all students in a subject area and then a special period for "supplementary" instruction is added.

These three requirements have resulted in the "pull-out" model because auditors and monitors can easily determine that the intent of the law is being followed.

The implementation of this model has the following unintended consequences:

1. The educationaly disadvantaged students lose the instructional services of the locally funded teacher for that period of time when they are receiving the Title I services.
2. These students usually miss one of two things that the non-Title I students receive during that "supplementary" period. They may miss instruction in subjects such as art and music. Second, they may miss enrichment activities with their regular teacher in the subject in which they receive the supplementary service.
3. The non-Title I students who do not attend the supplementary sessions have the benefit of having a reduced class size taught by their regular classroom teacher during that time.
4. Because "supplemental" requires that the "base" program be offered in addition to the supplementary period, it is not possible to reduce class size with Federal resources during that "base period" which might be a more cost-effective and a more educationally sound approach than waiting for a "supplemental" period.
5. Because different personnel instruct during the "supplementary" period, there is a problem of curriculum and instructional coordination between the regular classroom teacher and the Title I teacher. Often the curriculum for the programs is not adequately coordinated because of pressures of time and because instructional materials used often differ.

During the 1974–75 school year, the New York State Education Department conducted a study of compensatory reading programs in five school districts. One objective of the study was to determine how the level of achievement of participants in compensatory programs compared to eligible nonparticipants. Consideration of the findings of this study shed some light on yet another major problem associated with the prevailing "pull-out" model.

In this study, all students in grades four and five in the school district were administered pre- and posttests of reading achievement in November and May, respectively. In the analysis of the data, a matched-pair design was used where program participants were matched with nonparticipants according to sex, pretest score and amount of class variance on pretest. Results indicated that the group of nonparticipants had slightly higher posttest mean scores than did the group of students participating in supplementary programs.

These results would seem to contain an implicit challenge to the effectiveness of the compensatory education programs involved. However, that challenge is based in part on an erroneous assumption characteristic of some of the literature. The assumption is that students who do not receive the benefits of compensatory programs are simply receiving the ordinary, traditional course of study and that, therefore, they comprise a reasonable comparison group. It is generally true that nonparticipants are left behind in the regular classroom, while participants leave (i.e., are "pulled out") for the compensatory program. Information collected in the course of the study suggests that, with program participants out of the classroom, those students left behind are not receiving the ordinary course of study. In fact, the nonparticipants who remain in the regular classroom are receiving special treatment to the extent that the departure of program participants results in: (1) a reduced class size for those remaining, (2) the removal of students often difficult for the teacher to manage while teaching reading, and (3) any other incidental changes in the nature of the class which have a positive impact on the learning environment. In addition, a feeling of superiority may be generated among those who are not singled out for remediation. In summary, when some students in a class are pulled out for participation in a compensatory reading program and others are not, the nonparticipants remaining in the classroom may receive superior educational treatment in a more favorable environment. The irony is that the prevailing model, used largely because of the ease of which compliance with Federal law can be demonstrated, may be of greater benefit to students other than those who the compensatory programs are intended to help.

Additional difficulties with the "pull-out" model occur because local districts must try to coordinate the project offered with Title I funds with other categorical programs such as ESEA, Title VII, or ESAA. Since children deficient in one area are frequently deficient in others, multiple supplemental programs focus on the same disadvantaged students. Target students are not only "pulled out," they may be pulled in several directions by multiple programs. Student disorientation and excessive loss of class time result. In many cases, coordination problems caused by pull out and multiple programs may result in "supplanting" rather than a supplementing of the regular program. In one sense, it is impossible to avoid "supplanting" of the regular, basic educational program unless the project is offered after school, in the summer, or to preschool children.

The "pull-out" model leads to educational problems even though it does insure that Title I program and project follow the intent of the law. New York State has examined alternative options to deal with these problems, but the alternatives seem to run in conflict with the current statute. We are concerned with the educational impact of the present approach and believe that the legislation drives project implementation toward unintended and less effective consequences.

Local Designs of the ESEA, Title I, Project—The current ESEA, Title I, legislation provides flexibility in regard to who in a local district develops a project proposal. The law does indicate that the various levels of advisory councils be involved in the process, but is not explicit regarding the differential roles of the various levels of councils. Indications exist that articulation of Title I projects with local programs might be improved if building principals and building Parent Advisory Councils provided greater input to the district proposal which is approved by the school board. Provision for greater contributions from principals in the design of their respective school instructional program and more effectively accommodate differences in the principal's operating style, needs for instructional materials, and type of staff needs.

Selection of Title I Students—The present legislation requires that "objective" criteria be used in selecting those students with the greatest need for projects. To meet the intent of the law and to protect against audit "exceptions," all New York State districts use standardized tests for selecting project participants. They also select only those students who are below the national norm for that grade.

The use of these ground rules has resulted in the following consequences:

1. Since there is a problem of availability of standardized tests for use in kindergarten and first grade, districts have generally been reluctant to serve students in those grades because there is no "objective" method of selecting students most in need. Some school personnel believe this is not sensible on the grounds that teachers can determine which students are most in need. They also believe that starting programs in the earliest grades is most important because a sound start is better than remediation.
2. Local school personnel also express concern with the criteria of "below norm" because of the imprecison of the tests used. Guessing by an individual student on the test can result in that student being excluded from a program when teachers know that the individual has a different level of need.

Recommendations

1. Considering the range of difficulties accompanying the prevailing "pull-out model," the statute should provide flexibility to the states and local education agencies to assure Title I resources are used to supplement state and local funds in services integral to and least disruptive of the regular school program.
2. The statute should allow the states responsibility for determining whether the building principal and Parent Advisory Council should have a specified expanded role in project design.
3. In the light of continuing difficulties in selecting those children, especially in kindergarten and first grade, who would benefit most from program participation, provision should be made for greater flexibility on the part of local school personnel in identifying and selecting participants.
4. Considering the impact of unintended consequences accompanying the implementation of the "pull-out" model, consideration should be given to allowing Title I funds to be used to support the entire school building instructional program under an appropriate plan when the number of potential participants in categorical programs in that building exceeds the percentage of such children for the state and for other buildings in the district.

Evaluation of ESEA, Title I, Effectiveness

Another important group of Title I issues focuses on evaluation. These issues include the criteria for success, representativeness of samples, appropriateness of tests, methodological problems with analysis and interpretation of test results, and definition of the Federal role in evaluation. The net result of evaluation difficulties is the lack of a clear consensus regarding effectiveness of Title I.

Current evaluation requirements regarding testing can hinder program effectiveness. Mandatory pre- and posttesting locks students into a full year program and precludes assistance to students who need short-term help. Few appropriate tests exist for bilingual students, and math tests dependent upon certain reading skills are inappropriate measures of math achievement. There is a need for longitudinal studies and for followup, since annual evaluation cannot determine effectiveness without considering long-term growth. In addition, more appropriate tests are required.

Public Law 93-380, which amended ESEA to require the U.S. Office of Education evaluation models for Title I, was, in part, a response to lack of compliance at the state and local levels and to legislative and regulatory ambiguities. With the completion of the first decade of ESEA, a more effective Federal/state/local partnership has been established for accomplishing national goals. Clarification in legislation and in operating rules set forth by USOE have produced a higher degree of understanding of goals of ESEA. Although further clarification may be advisable, compliance with fund allocation regulations have largely been achieved. A general upgrading of administrative practices has been accomplished at all levels, while USOE leadership and state-local experience has improved the technical capacities of professional staff in dealing with grants management and program involvement. In light of these changes, the role of the U.S. Office of Education should shift from that of "control" to work with states in promoting greater state leadership and responsibility in providing states more flexibility in administrative practice. Where states have extensive compensatory education programs, such as New York's Chapter 241 and Title I funds, they should combine these with Federal efforts—retaining the principle of each—to present integrated programs of compensatory education.

There is a basic tension between two purposes of Title I evaluation. Is it a tool for improving local program design and performance or a tool for providing the Federal government with information on Title I effectiveness? The Federal evaluation systems designed to date cannot provide the type of information the Federal government desires. Federal emphasis should be placed on building technical competence in state education agency and local education agency evaluation capacities regarding their own programs, and to developing local and state evaluation studies to be used in policymaking.

Effective enforcement of regulations should be based on comprehensive and detailed SEA examination of LEAs' annual program plan and examination of the district's evaluation procedure. Once approved, the plan and project budget should serve as a contract between the LEA and the SEA. The SEA would maintain contract compliance by written reports, formal and informal visits, and onsite audits.

Meaningful evaluation requires a clear statement of goals and eligibility criteria, support and accountability for national/local project management and research efforts to raise the level of causal knowledge about educational outcomes.

Present Federal legislation and regulations should be further simplified and clarified. Federal guidelines should broadly address important issues of program goals, project management, and comparability, without getting into details of project activities.

In the field of research and development, the low knowledge base relating means to ends in compensatory education is a continuing area of concern. The lack of valid measures of student achievement raises questions about program effectiveness in terms of remediation. Standardized, norm-referenced tests are inadequate for research and program evaluation. Since both research and systematic learning are hampered by the lack of appropriate measurement, New York State supports Federal funding for SEA development of criterion-referenced measures of educational achievement, as well as development of systems for collecting, analyzing, and reporting data based on such measures. Better measurements will make possible research into the relationship between project activities and student outcomes. We recommend Federal support of basic SEA and other public agency research into the relative effectiveness of alternative educational approaches in raising student achievement. Renewable grants for program-related research should be made available.

State agencies should receive Federal assistance to support research and development of improved management systems at both project and program levels. This is crucial since the development of better measures, systems for managing data, and improved educational practices will be meaningless unless implemented in the districts.

Taken together, these recommendations are directed toward more systematic and integrated programs and more informative public reports on compensatory education.

Expansion of the State Role

As ESEA, Title I, is reviewed related to renewal in 1978, it is appropriate to reexamine the respective roles of the state and Federal governments in this program. The Federal role in Title I has been the identification of a major educational problem and possibility to which the states and local education agencies had not responded adequately. In providing funds and directions on the problem, Federal action has shaped local and state action. Much of the change has been positive. On the other hand, Federal requirements have necessitated the use of project designs at the operational level which, as previously discussed, are characterized by certain unintended negative consequences.

The past decade has witnessed general upgrading of administration at all levels, broader understanding of ESEA goals, and achievement of a high degree of compliance with fund allocation requirements. The greater capacity of the states in the Federal/state/local partnership suggests the timeliness of a readjustment of the state and Federal role in this program. An expansion of the state role in planning, regulating, and evaluating programs funded through ESEA, Title I, is indicated. States possessing the skills and capabilities to assure the expenditure of Title I funds in accordance with the intent of the law should be enabled to do so without the hindrance of detailed Federal prescriptions.

The following recommendations are made:

Federal Responsibilities. The Regents recommend that the Federal responsibilities be the following:

1. To distribute funds to states according to a revised formula which incorporates the factors discussed in this document;
2. To review and approve the characteristics and guidelines which the states develop. Approval must be based on an assessment of whether a state has suggested reasonable education approaches for projects which serve the objectives of the program, while supplementing state and local funds in services integral to the regular school program;
3. To monitor and audit state and local operations. The criteria to be used should be prespecified and available to all parties;
4. To review and make recommendations on evaluation methodologies and measurement devices used by states and local education agencies; and
5. To conduct sample evaluations for reporting to Congress and the President.

States' Responsibilities. The Regents recommend that the responsibility of states be expanded so as to enable each state:

1. To distribute ESEA, Title I, funds within the state in accordance with state planning which assures the Federal intent is attained while coordinating Title I programs and projects with state compensatory education programs, as well as basic educational programs. Appropriate economic or educational indexes would be established by each state for the distribution of ESEA, Title I, funds. State responsibility would include a statewide assessment of needs, planning, administration, and evaluation of programs.
2. To specify what models of local educational programs or projects are consistent with the intent of Title I. Specific models

should be developed by state education agencies in consultation with local education agencies.

3. To conduct evaluations of local educational projects. These evaluations should be used to determine the overall impact of ESEA, Title I, funds on students; to conduct state education agency policy analysis studies to improve effectiveness of local projects; and, to aid Congress and the President in determining the effectiveness of ESEA, Title I.
4. To secure the following assurances from local education agencies in place of present review and approval processes:
   a. Use of money for projects which meet the characteristics that the state specifies as being acceptable;
   b. Maintenance of separate accounts for the Title I funds;
   c. Agreement to cooperate with state sample evaluations which will be unannounced;
   d. Maintenance of a plan in their district that can be reviewed by state or Federal personnel; and
   e. Implementation of an evaluation system for their own instructional management purposes which evaluates their total educational program including Title I projects.
5. To monitor and audit local projects with separate staffs assigned only to these responsibilities. State education agencies should be responsible for developing checklists to insure that local education agencies understand how they are to be monitored and audited.
6. To provide technical assistance to local education agencies with a staff which is separate from those who monitor, audit, and conduct statewide sample evaluations. This requirement is imposed to foster an open relationship between local education agency personnel and the technical assistance staff.

To support the increased responsibility given to states under these recommendations, administrative allocations to states should be increased above current one percent levels.

ESEA, TITLE IV

Public Law 93–380, 1974, consolidated seven categorical programs into two authorizations. Part A of Title IV includes authorizations, allotments and common program requirements for the two program purposes of Parts B and C. Under Part B, Libraries and Learning Resources, grants are made to public local education agencies on a formula allocation basis for the following purposes: (1) the acquisition of school library resources, textbooks, and other printed and published instructional materials; (2) the acquisition of instructional equipment and materials suitable for use in providing education in academic subjects; and minor remodeling of laboratory or other space used for such equipment and materials; and (3) a program of testing students; programs of counseling and guidance services; programs, projects, and leadership activities designed to expand and strengthen counseling and guidance services.

Under Part C, Educational Innovation and Support, grants are made to public local education agencies on a competitive basis for innovative and supplementary service programs which are designed to: (1) provide vitally needed programs not available in sufficient quantity or quality aimed at local needs which reflect state program priorities; (2) establish exemplary elementary and secondary school programs to serve as models for regular school programs; (3) improve nutrition and health services in schools serving areas with high concentrations of children with low-income families; and (4) reduce the number of children who do not complete their secondary education in schools which are located in urban or rural areas having a high percentage of children with low-income families.

In addition, Part C funds are available for strengthening the leadership resources of state and local education agencies.

Part A

The New York State Advisory Council has performed its work diligently and has provided candid and productive advice to the State Education Department. Department staff have undertaken several policy studies of both Parts B and C to assist the Council in its work. All of this has been accomplished while the state had the responsibility for operating the previous categorical programs as well as the new Title IV program. Provisions for the Council should remain intact.

Recommendations. The Regents recommend that the following changes be made in Part A.

1. The state's administrative allocation under Title IV was lowered to 5 percent from 7½ percent. The Regents believe that Department staff should greatly increase its monitoring and audits of local projects and provide additional technical assistance to local education agencies, especially where districts have a need but do not have the capability to plan and operationalize programs. The Regents recommend that 7½ percent be available to adequately undertake these functions.
2. The existing legislation requires that a "single application" be submitted for both Parts B and C. The intent of this legislative requirement was to ease the burden for local education agencies. The impact of this requirement has been generally to delay the release of Part B funds to local education agencies. The burden on districts has not been eased by the require-

ment. The types of projects funded under Parts B and C are very different. One program works by formula and the other through competitive grant. The timing and content of application for these different programs does not lend itself to a single application. The Regents recommend that the Advisory Council be given the responsibility for deciding on the form of the application, since they represent the local level.

Part B

The impact of Part B on local school operations at present appropriation levels is limited. New York State believes that the flexibility given to local education agencies under the current statute is desirable, but that the administrative burden of providing detailed program plans to secure local allocations is excessive in relation to the funding. While these Federal funds are important to the districts, they are not large. A financial impact study of Part B in New York State has shown that only 15 percent of the sampled districts had an increase of 2 percent or greater in expenditures for 1975–76 related to Part B activities. Most districts will receive less than 4 percent through Part B of their total funding for Part B purposes in Fiscal Year 1977 when all aid under Title IV flows by formula to local districts.

The present legislation does not allow nonpublic schools to participate in the Part B program if the public school district in which they are located does not "maintain effort." Children in 82 nonpublic schools in New York State were denied Part B benefits in Fiscal Year 1976 because of this gap in the statute.

Recommendations

1. Because the funding level of Part B does not have a large impact, the Regents recommend increased appropriations.
2. Since the Congress clearly intended that private school pupils share equitably in the benefits of the Part B program, the Regents recommend that the legislation be amended to permit the state agency to designate a public agency to serve private school children enrolled in private schools in public school districts not participating in the Title IV-B program.

Part C

New York State believes that the existing authorization for Part C is sound. It is essential to maintain the provisions for strengthening state education agencies. The impact of grants under Part C will be limited when only $10 million is available to 750 school districts and approximately 4 million public and private students. The Regents recommend that the appropriations for Part C be increased substantially.

EDUCATION OF HANDICAPPED CHILDREN

The Education for All Handicapped Children Act of 1975 (PL 94–142) is one of the most far-reaching Federal education programs ever to be enacted. The Act sets the goal that each state shall make available free appropriate education for all handicapped children age 3 to 18 by September 1, 1978, and for all such children age 3 to 21 by September 1, 1980, unless the application of such requirements would be inconsistent with state law or practice or court order pertaining to public education for those age groups within the state. The statute asserts that there are eight million handicapped children in the United States today, more than half of whom do not receive appropriate educational services.

P.L. 94–142 provides that the Federal government shall supplement state and local efforts in providing for high cost services required for handicapped children. This is a positive aspect of the legislation. The statute, however, includes several provisions which will result in operational difficulties and will leave a tremendous gap between the stated intention and the practical impact of the Act. P.L. 94–142 must be amended early in 1977.

Comment on Formula Provisions

The formula for the authorization of funds is based on the number of handicapped children age 3 to 21 who receive special educational services. This number is limited to no more than 12 percent of the total population age 5 to 17 in New York State. As a part of the percentage for any state, children with "learning disabilities" cannot constitute more than one-sixth of the percentage until final regulations have been published defining the "learning disabled." Also, handicapped children receiving ESEA, Title I, services cannot be included in the count. The national appropriation is determined by multiplying the national number of handicapped children receiving special education by a percentage of the national average per pupil expenditure for education. For Fiscal Year 1978, the percentage is 5 and, therefore, the multiplier is approximately $70 per child.

There has never been a complete and common definition nor an accurate count of handicapped children receiving special services in the United States. An October 1976 count from all the states indicates approximately 3.2 million children are receiving special educational services. Another count is to be taken in February 1977 and, for purposes of the national appropriation, this count will be averaged with the October 1976 count. Congress has appropriated $315

million for this program for Fiscal Year 1978. If that sum is to be allocated at the rate of $70 per child, the average of the October and February counts of children receiving special educational services must be 4.5 million. To reach that average, the February count must be 5.8 million children receiving special educational service or 2.6 million more children than were counted in October 1976. This is most unlikely. The net impact of the formula will be a distribution of funds far less than the Congress intended in its appropriation.

The legislation is incorrect on the number of children needing and receiving special educational services. The allocation formula has other problems. There is no provision for recognizing the difference in costs and quality of service among the states. Allocations based on the national average per pupil expenditure ignores significant cost differentials among states, as is recognized in ESEA, Title I.

The payment rate for Fiscal Year 1978 of $70 per child receiving services provides a very small portion of the actual cost of services. The cost of providing special educational services to many handicapped children exceeds three times the national average per pupil expenditure, which means the Federal contribution per child represents less than 2 percent of the cost of services being provided. Attached to this small contribution, however, are sweeping educational, medical, procedural and other mandates which could cost states and localities several billions of dollars in the next few years.

The Act clearly intervenes to shape state and local education policy with the promise of substantial aid. In fact, the Act forces increased state and local expenses with little Federal aid.

Operational Difficulties

The Act requires extensive coordination of services at the state level, while allowing fragmented and overlapping Federal programs. In addition, it provides for aid distribution within a state which, if the aid becomes significant, runs counter to state formulas for equalizing educational opportunity by providing equal dollars to wealthy and poor local school districts.

The Act requires a detailed timetable for accomplishing the goals and for data on the kind and number of facilities, personnel and services necessary to meet the goals. It also requires that when a state education agency is unable or unwilling to establish a program for handicapped children or to consolidate with other local education agencies, the state education agency is to use the funds otherwise available to the local education agency to provide special education and related service directly to handicapped children.

Under the procedural safeguards section of Public Law 94-142, the decision of the impartial hearing officer is final and may be appealed only in court. Yet, this section provides that the hearing and appeal procedure must be conducted as determined by state law. In New York State the procedures provide for an appeal to the Commissioner of Education. There is a conflict between these two provisions.

A most far-reaching provision of Public Law 94-142 is that if a state fails to comply with any provision of this Act, the U.S. Commissioner of Education may withhold payments to the state, not only under this Act, but also other Federal programs, including the Elementary and Secondary Education Act and the Vocational Education Act.

Recommendations

The following recommendations should be acted upon early in the 95th Congress.

1. Federal requirements in the statute should have a delayed effective date until Federal funds equal one-third of the current cost of providing services to handicapped children needing services.
2. Federal funds should be distributed among states based on the relative costs of providing services in each state and the age 5 to 17 population in a state. It is assumed that the overall incidence of handicapping conditions is approximately the same throughout the nation. A full population count, rather than a count of handicapped, is more accurate and simple.
3. States should be permitted to use up to one-third of the money received for five years to develop more cost-effective methods of delivering educational services to handicapped children.
4. States, with the approval of the Secretary of the Department of Health, Education and Welfare, should be permitted to distribute the funds available for services as part of their own formulas for aid to education of children with handicapping conditions.
5. Federal programs for handicapped children should be reorganized so that different Federal funds can be coordinated effectively with state and local funds for programs.
6. Federal data requirements for facilities, personnel and services should be modified so that general information available from states' data collection systems will suffice.
7. The requirement that a state education agency be responsible for providing direct services to handicaped children where a local education agency is deficient, should be deleted. The Act should require the states to insure that local education agencies meet their obligation of providing these services.

8. The Act should provide that states have due process procedures to protect the rights of pupils and parents. Explicit Federal procedures that duplicate or conflict with state laws should be deleted.
9. The provision that Federal funds from this and other acts available to a state may be withheld if a state is found to be in noncompliance with Public Law 94-142 should be amended so that only funds available under Public Law 94-142 might be so withheld.

CONSOLIDATION

Several Federal Acts serve similar groups with similar purposes. The programs under these Acts should be simplified and reorganized. Such legislation should: permit greater flexibility in the use of funds, reorganize and consolidate programs according to educational function and populations to be served, and simplify the categorical requirements while enabling the states to develop appropriate regulations.

Illustration of the Problem

An example of one urban school district will illustrate the problem of having several categorical programs under different Acts and administrative auspices targeted at essentially the same population of students with similar needs. Substantial numbers of students are markedly deficient in reading and mathematics; a high proportion of students have English language difficulty. The district received Federal assistance under Title I of the Elementary and Secondary Education Act in all 20 of its schools. Both Federal and state agencies have funded other special educational projects in the district. The district had five bilingual programs in 1973-74, two established and administered by separate offices of the U.S. Office of Education and three Title I bilingual programs approved and administered by the state.

In auditing the multilingual program, auditors from the Office of the State Comptroller, Division of Audits and Accounts, could find no indication that any of these agencies was aware of the extent to which others were meeting district needs for bilingual services. U.S. Office of Education personnel who supervised the multilingual program indicated they neither reviewed district data relevant to coordinating the use of funds with any others, nor did they coordinate data with other U.S. Office of Education programs or the state offices administering Title I, ESEA.

A further indication of coordination problems is reflected in disagreement between the State Education Department and the U.S. Office of Education regarding one project proposal. State Education Department personnel found the application to be inadequate and recommended funding only if the proposal was substantially revised. Despite this recommendation, the project was approved for funding by USOE. The district project was funded, but eventually the district returned the unused money to the U.S. Office of Education.

A part of the problem is the attempted "long distance" supervision by USOE directly over local school district projects. Auditors reports indicate a range of deficiencies and shortcomings regarding monitoring the various programs. For example, one unit of USOE did not conduct required field observations until the school year was almost over. Consequently, erroneous and misleading progress reports were submitted and the program did not get the benefit of close USOE supervision. After the site visit, the resulting USOE report was critical of program and management. In spite of the critical nature of this report, the USOE approved a grant award for the next year that amounted to a 225 percent increase over the current year.

Indications are that programs would benefit from closer, more stringent, and timelier monitoring. With so many discrete programs operating within the same district, with several agencies and levels of government involved in monitoring, it appears that school personnel had to answer to so many authorities that they really answered in a meaningful way to no one regarding certain aspects of programs. As part of efforts to strengthen monitoring and increase its timeliness, centralization of the monitoring function in a single authority in a state is needed.

Consolidation

A major effort in consolidation should be to combine Federal programs serving educationally disadvantaged children and bilingual students. A second effort should be to combine programs serving handicapped children.

Although there is widespread concern within the education community to consolidate existing categorical programs, there is less certainty within the Congress that consolidation would attain its expectations. Ultimately, the only way to determine if a carefully designed consolidation of programs can insure greater flexibility at state and local levels while protecting populations and purposes identified by the Congress is to try it. We recommend legislation that would permit a state to consolidate programs with approval of the Secretary of the Department of Health, Education and Welfare.

Those states which see advantages in consolidation and which are prepared to assume the obligations of that approach should be enabled to opt for it. Other states could continue with a categorical grant approach. The situation would provide a basis for determining effectiveness of restructuring and shifting in the locus of decision-making called for in consolidation.

States that have already progressed with their own programs which are similar to those of the Federal government would be able to integrate state and Federal programs and funds targeted on essentially the same population and needs.

Comprehensive State Plan

The consolidation plan would include provision of a single set of administrative procedures. Rather than separate needs assessment, planning, administration, and evaluation for each separate Federal program, there should be one process by which the state and local school districts administer Federal programs. What is indicated is a single comprehensive plan prepared by the state education agency in conjunction with each local education agency. A single statewide needs assessment could identify all students in the state with special educational needs and indicate the services required. Special program needs would also be identified. Comprehensive planning could then be based on this comprehensive needs assessment. Provision should be made for participation in planning by all agencies, organizations, and individuals in the state interested in Federal educational programs. Federal funds should be coordinated with the use of state and local funds intended for similar purposes and targeted on the same populations.

Grants for Planning

Preceding a state consolidation plan, the state could receive a planning grant to assist in developing consolidation. The magnitude of the task of preparing the comprehensive plan and the need for greater effort and expertise at the state level makes the grant desirable.

Allotments

Legislation directed toward consolidation should contain assurances that the allotment of funds to states and the subsequent distribution to local education agencies is effected without any decrease in the amounts that would have been received under categorical assistance.

Management Inservice Training

Since the urgency of the needs in which categorical educational programs are targeted is great, substantial pressures are generated to continue programs attempting to meet those needs even if monitoring detects serious shortcomings as occurred in the preceding illustration of a policy problem. Since money will often apparently flow even where positive results are meager or lacking, it is incumbent on the Congress to insure that administration of programs is as effective as possible. Provision should be made for inservice training programs to improve and develop rational program management capabilities at both the state and local levels. The establishment of inservice training programs for management personnel is one possible step to promote more informed, rational, and systematic management of programs at planning and operational levels.

Research and Development

Any new Federal legislation aimed at consolidation should take into account the long-range need for greater research and development efforts to provide the tools and knowledge base for more rational decision-making regarding high cost education programs. Research and development efforts should give priority to development of valid measures of student achievement, research into relative effectiveness of alternative educational approaches, and improvement of program management. Continued research will help make possible a needed shift in focus from a preoccupation with means to adequate attention to ends. Results rather than methods should be of primary concern.

STATE EVALUATION PROGRAMS

Federal statutes require and fund evaluations of Federal education programs. These provisions have yielded limited results. A comprehensive and continuing base of testing information is essential for the evaluation of Federal programs.

Most Federal statutes focus on local evaluations of the specific projects funded under the statute. Unfortunately, these evaluations are generally limited because the projects provide only a part of the service offered to the students in a particular subject, such as reading or mathematics. The evaluations generally do not provide appropriate comparisons or longitudinal information about students participating in those projects compared with other students. In the aggregate, substantial Federal funds have been used for evaluation,

e impact of the information on policy review has been dis-

urrently provided under several Federal education titles
ion should be consolidated into a new statewide evalua-
am. The program would be administered by state educa-
ies working with local education agencies. The program
phased in over a three-year period, permitting the states
y to develop a sound evaluation system to be approved by
ary of the Department of Health, Education and Welfare.
am would provide first-year grants from the Federal gov-
o the state education agencies to plan and develop the
evaluation system. This planning could be done by states
or in consortia with other states working with the U.S.
Education. During the first and second years, evaluation
ently provided through Federal programs would continue
local education agencies. During the second year of the
evaluation funds flowing to local education agencies would
n accordance with the statewide evaluation plan. During
program year, evaluation funds previously flowing to local
agencies would be consolidated in one appropriation to
education agency for the overall statewide evaluation plan.
ne exception of planning grants to establish the statewide
plans, this proposal would cost no additional Federal
nds currently provided under several titles for evaluation
blended into a comprehensive evaluation plan. The
evaluation system would yield data on specific projects
rough Federal titles and would also provide more com-
e evaluation information for school building, school district
vide results. The consolidated testing will provide for lon-
and cooperative studies and will enable general assessment
ectiveness of Federal programs.

SUMMER FOOD SERVICE PROGRAM

mmer Food Service Program has increased substantially in
few years. Unfortunately, the increase in the program size
accompanied by severe administrative problems reflected
exceptions and program waste. Administrative problems
urred because of the statutory limits and conditions on pro-
administrative expenses.

rrent law limits the amount of funds available for adminis-
nds to 2 percent of the total amount disbursed to service
ns during the present fiscal year.

This amount can only be a guess throughout the program operation since the actual amount disbursed will not be known until after the fiscal year is ended. The amount available to the state is reduced by any reduction in the total disbursed to service institutions due to audit exceptions. State agencies may not know with certainty the funds to be available as they plan for and employ personnel for the program.

Recommendation

We recommend that the legislation be changed to provide a guaranteed amount for administration (such amount to be determined by the U.S. Department of Agriculture on the basis of the experience of the previous year and state agency estimates for the current year) thereby allowing the state agency to adequately plan and provide the necessary staff and supportive materials. In addition, it is recommended that monies reclaimed or expended due to audit exceptions (state or Federal initiated) not be deducted from the base used in computing state administrative funds.

VI. VOCATIONAL REHABILITATION

A recent national study, A Comprehensive Needs Study by the Urban Institute, indicates that approximately 2 percent of Federal disbursements on behalf of the disabled are devoted to rehabilitation efforts. The study suggests that the potential social benefits of rehabilitation have not yet been fully explored or pursued. Most of the Federal disbursement for this proposal is in the vocational rehabilitation program, now 56 years old, which has reached a national funding level of $740 million. The program operates currently under extended authority of the Rehabilitation Act of 1973, which expires September 30, 1978.

The purpose of the vocational rehabilitation program is to assist physically and mentally disabled persons who possess substantial vocational handicaps to acquire capacity for productive work. Work objectives may include competitive employment, sheltered work, or improved functioning as workers or homemakers within their own homes. The range of services available under the program to achieve these ends include professional rehabilitation counseling, diagnostic and evaluation services to assess vocational potential, a variety of training services, surgery or appliances to reduce disablement, selective placement in suitable work, and postemployment aid to assure that the handicapped worker is able to maintain his/her employ-

ment. The service program is planned jointly by the client and the counselor.

In New York State, vocational rehabilitation services for all but the blind are administered by the Office of Vocational Rehabilitation of the State Education Department. (Blind persons are served by the Commission fo the Visually Handicapped of the State Department of Social Services.) The basic rehabilitation counseling and planning with clients is carried on by the counseling staff of the Office. Other services such as training and restoration are secured through other public, voluntary, or proprietary community sources.

The Office of Vocational Rehabilitation currently serves more than 100,000 clients annually. Many of these disabled youth and adults are referred by the Social Security Administration, as Social Security Disabled Beneficiaries or Supplemental Security Income recipients. Some are disabled public assistance recipients referred by local Departments of Social Services. Others are referred by physicians, hospitals, school programs for children with handicapping conditions and a variety of other local agencies. Many apply directly for services themselves.

At the present level of resources available for the program, there is uncertainty whether all who apply can be served. Standby plans have been established for serving first those groups identified through Federal mandate and state interagency agreements as having the highest priorities. Inflation and the general regional economic slowdown have affected the level of resources available for the program. Although program accountability, general productive improvement and the application of other benefit sources are being addressed to stretch available resources, the planned expansion of services for certain disability groups has been deferred. The state's unemployment rate, above the national average, continues to limit opportunities for the handicapped to become productive members of society.

The immediate needs of the Federal-state vocational rehabilitation program follow:

1. **Retention of Integrity of Rehabilitation Services for Handicapped Persons.** For over a half century, the Federal-state vocational rehabilitation program has been a successful advocate of the vocationally handicapped largely because of its singular purpose, focused responsibility, and earmarked resources. The handicapped have recently been recognized as deserving "affirmative action" consideration. This policy is sound, but it has been accompanied by the tendency to disburse services among programs and agencies. It is important that the elements of vocational rehabilitation not be diffused among broader program areas because, as has been shown in some regional experiments, the interests of the handicapped then also become diffused, less visible, and command less attention.

2. **Allocation Formula.** The current Federal formula for allocation of funds among the states for the Basic Support Program reflects national conditions prevalent more than two decades ago. A formula which is equitable now is needed. The 1954 amendments to the 1920 law were intended to give added stimulus and encouragement to vocational rehabilitation efforts in rural and Southern areas, and in states where relatively little progress in such programs had been made, namely, the low per capita income states. The formula relies heavily on two factors—population and total per capita income—and uses a "squaring" mechanism of inverse ratios of population and per capita income. The effect is to target funds away from large industrial states where educational and training costs are greater, and the numbers of people in need of services are significantly larger.

The current allotment formula was reauthorized by the 94th Congress for less than a two-year period. This formula will be continued automatically for one more year unless a change is made before March 15, 1977. The provision for change was a part of the Senate and House committee compromise and an acknowledgment that the existing formula results in an outdated and inequitable distribution. The following table illustrates the comparative impact of the formula on nine states.

TABLE IV

State	Disabled Population Per Capita Grant FY 1976[1]
Wyoming	$113.50
New Mexico	91.90
South Carolina	80.70
Louisiana	78.00
Massachusetts	57.80
Connecticut	47.10
New Jersey	45.50
Illinois	44.80
New York	44.10

[1] Department of Health, Education and Welfare data.

Additionally, it may be pointed out that the 25 states receiving the lowest per capita aid grants in Fiscal Year 1972 and Fiscal Year 1973 represented almost 75 percent of the nation's population.

A clear need exists for a formula which would be equitable under present-day conditions. Under Part C of the Rehabilitation Act, Innovation and Expansion Projects, there is a more equitable allocation formula for project grants on the basis of state population with a minimum grant for each state. A similar approach to basic support allocations would provide New York and other populous states with allotments which better reflect need and cost. In addition, the existing formula ignores regional differences in cost and fails to effectively target aid to those areas with greater total need. We recommend elimination of the "squaring" mechanism. Furthermore, we recommend use of per capita *disposable* income as a more realistic indication of income capacity, rather than *total* per capita income.

3. **Adequate Authorization Level.** The factors squeezing program services are inflation, growth in the number of persons served, and the federally mandated priority to serve the most severely handicapped. These persons require both lengthier and specially developed services which are usually particularly expensive. Authorization levels should accommodate these increased cost factors.

4. **Innovation and Expansion Project Program.** Specially earmarked funds for the development of improved program services should be continued and increased so that the program can keep pace with new techniques and opportunities.

5. **Construction and Establishment of Rehabilitation Facilities.** Although the current Act authorizes construction and establishment of rehabilitation facilities, funds have never been appropriated. Development and expansion of rehabilitation services are essential if the special service needs of larger numbers of severely handicapped persons are to be met. To help assure priority status for such construction and establishment, separately identified authority should be continued and adequate earmarked funding provided. Funding for this construction program would also have general employment benefits similar to those being proposed for Public Works Employment Programs.

6. **Rehabilitation for More Independent Activity.** Many severely handicapped persons who cannot embark upon vocational objectives

or who may not be able to complete vocational rehabilitation services could attain greater functional independence if provided with appropriate services. Some could be improved functionally to the point where they might be able to pursue vocational goals. Others who are later determined unable to undertake vocational activity can be helped to more independent functioning status through continuation of some rehabilitation services. Under current statute, the latter have their programs stopped and their records closed as "not rehabilitated." These individuals could be helped to improve their functioning activity. The present Act has authorized studies to better define the need and the resource requirements for such services. There are early indications that sufficient public and personal benefits exist to justify such a program of services for independent living. We recommend that any program for independent living be administered by the vocational rehabilitation agencies but be authorized and funded as a separate program.

7. **Appropriate Program Staffing on the Federal Level.** Program evaluation is one function of the Rehabilitation Services Administration which should be internally staffed to assure a satisfactory level of coordination with the states. There has been a tendency at the Federal level to adhere to required agency personnel ceilings by annually contracting functions to companies, universities, and other establishments outside the government. This practice proves counterproductive in some program areas for which year-to-year continuity of function, communication with state agencies, and development of requisite competence is important. Where functions should be provided by Federal agencies, they should be given adequate support.

8. **Census Data.** National and state information on the prevalence and incidence of disabilities and work handicap is needed for effective planning of Federal and state programs. The 1980 Census, the subsequent quinquennial census, and each census thereafter should secure sample-based information on a limited number of items to be identified by the Rehabilitation Services Administration.

VII. LIBRARY SERVICES

Public libraries provide informational, educational, and cultural services through more than 10,000 state, county and local jurisdictions in the nation. The resources of these library units are uneven; the demands for information have overtaxed the systems.

Major Federal support for libraries was first enacted in the Library Services Act of 1956. This act supported the extension of library services to rural areas. When renewed in 1964, the Library Services and Construction Act (LSCA), emphasized changes to address problems in urban areas including municipal overburden, shrinking tax bases, and increasing concentrations of disadvantaged persons.

New York State has long been committed to providing library services for the disadvantaged, those least familiar with library services and least able to express their needs. New York's implementation of LSCA programs since the early 1960's has channeled substantial funds for service to the disadvantaged. In Fiscal Years 1971 to 1975, approximately 45 percent of all LSCA, Title I, funds allocated to New York State were disbursed as project grants to the five major metropolitan areas.

Another important advance in New York through LSCA funds is the development of effective library systems and networks of libraries and information sources. In recent years, states and local communities have taken broader and more systematic approaches to library services by providing bookmobile service and sharing books, staff and other resources on a multicounty basis. New York State has led the development of library systems concepts by providing more state aid for these purposes than any other state.

Public libraries are providing new services to keep pace with changing economic and social conditions. Job Information Centers established in New York State in 1972 at public libraries and expanded through LSCA funding offer two distinct services. First, they aid individuals seeking new positions by centralizing all job information at one site. Information at the centers often includes Civil Service announcements on all levels (local, city, county, State and Federal), classified sections of area newspapers, the New York State Job Bank Book, and job listings from private employers and agencies. Second, the centers inform patrons of services offered by government agencies and private groups through community resource files. Referrals are made from library centers to government and private agencies and vice versa. Programs to meet community needs at the centers are cosponsored by libraries and by government and private agencies. Increased Federal support of these projects is needed.

Recommendations

LSCA should be extended for the period of one year, pending recommendations of the National Commission on Libraries on the

In addition, changes in LSCA should be made to provide additional support for urban libraries and the needs of the economically, physically and linguistically disadvantaged. LSCA grants to city libraries should strengthen their services and permit their continued contribution to system services provided by various types of libraries.

Thus, they could both continue to serve local populations and to provide extended services to readers regardless of location. Current emphasis in LSCA on short-term projects should be shifted to a focus on long-term efforts to assure that library services will be available to metropolitan populations.

The concept of forward funding should be included in this Act, as it has been in other education legislation. Long delays between enactments and receipt of funds pose extremely difficult problems for efficient planning. Forward funding will produce economies as well as more effective use of appropriations and administration.

The Regents also recommend the creation of a cultural education association through an informal combination of library services, museum services and broadcast facilities monitored by the Assistant Secretary of Education. Formal educational activities would remain the province of USOE. A functional alliance would ensure greater national efficiency and interchange in cultural education based on the community of interest of its members. Duplicative efforts and fractionalized funding could be alleviated.

VIII. VOCATIONAL EDUCATION

The Education Amendments of 1976 provide a significant reorganization and change of vocational direction. New expectations have been imposed for planning activities, evaluation, and the data needed to carry out effective programs. Three major factors must be reexamined at an early time if expectations are to be met.

(1) The Act provides a separate line authorization for state-level planning, evaluation, data needs and state administration. The maximum national authorization of $25 million per year is not sufficient even to meet the state administration needs aside from the other purposes. At the Congressional conference in 1976, the provision for planning, evaluation and data needs was for $25 million for the *new requirements*. The addition of state administration to that authorization will result in a severe reduction of funds for states to implement the administrative, planning, evaluation and data requirements of the law. With this reduction, the states cannot carry through their obligation under the Act.

(2) The new legislation does not permit use of Federal funds at the local level for costs other than instruction, and material and equipment related to instruction. Yet, at the same time, additional responsibilities are required of local education agencies in this legislation, such as more involvement of local advisory councils, additional planning, evaluation and reporting. None of these activities can be supported with funds under this Act. The restriction on funds is not logical and must be eliminated.

(3) The third problem relates to administrative provisions for the period July 1, 1977 to September 30, 1977. The authorizing legislation provides that the new state plan for Fiscal Year 1978 is not effective until October 1, 1977. At the urging of the U.S. Office of Education, the appropriations committees have provided that funds for Fiscal Year 1978 purposes are available on July 1, 1977, three months before the beginning of the new fiscal year and the operation of the new law under the state plan. Neither the Congressional committees nor the U.S. Office of Education has resolved which ground rules and plans cover the quarter starting July 1, 1977.

Recommendations. To resolve the three problems outlined here, the Regents recommend early Congressional amendment of this Act:

1. State administrative funds should continue to be drawn from basic grant funds and the new expectations for planning, evaluation and data requirements should be funded from the separate authorization provided in the 1976 amendments.
2. The definition of vocational education should be expanded to include the necessary and required expenditures by local education agencies for the effective and efficient administration of the program at the local level and the expanded planning, evaluation and reporting requirements placed on local education agencies.
3. During this transition into the new five-year plan, states should be allowed the option of selecting the operational base year that will be most effective and efficient with regard to each state's administration of Fiscal Year 1978 funds.

IX. FACILITY RECONSTRUCTION AND RENOVATION

The 94th Congress enacted significant legislation for specific reconstruction and renovation projects. The Education Amendments of 1976 added to the Higher Education Act a new Part E, Section 771, for reconstruction and renovation projects to enable postsecondary institutions to economize on the use of energy resources and bring their academic facilities into conformity with the requirements of the Architectural Barriers Act of 1968 and environmental protection or health and safety programs mandated by Federal, state and local law. The Education for All Handicapped Children Act of 1975 included a new Section 607 related to the cost of altering existing buildings and equipment of state or local education agencies to meet the requirements of the Architectural Barriers Act of 1968.

Appropriations for these two new provisions should be of a high priority in 1977. Furthermore, the provision related to state and local education agencies should be expanded to include assistance to economize on the use of energy resources and bring their facilities into conformity with environmental protection or health and safety programs mandated by Federal, state and local law.

These legislative authorizations and funds should be made available to assist libraries and museums with reconstruction and renovation projects to meet the same objectives.

Supplemental Appropriation

President Carter has announced a program to stimulate the economy in part through public works and construction programs.

Four Acts that currently authorize expenditures for construction either have no appropriation or an appropriation less than the authorization. We recommend a stimulus supplemental appropriation for Fiscal Year 1977 in the amount of $1.127 billion to implement existing construction authorities in the Higher Education Act, the Education of the Handicapped Act, the Rehabilitation Act of 1973 and the Library Services and Construction Act.

The Congress would not have to enact a new authorization, but could move rapidly to appropriate funds under these Acts as a stimulus to the economy and to accomplish the important purposes provided in each of the authorizations. Some of these authorizations require matching funds by state and local governments and private contributions. A Federal appropriation would stimulate construction programs probably exceeding $1.8 billion.

The funding of these authorities would provide assistance to public and private nonprofit agencies providing needed public service, particularly to meet reconstruction and renovation standards mandated by law.

The summary table attached indicates the Acts and the proposed appropriations for Fiscal Year 1977.

TABLE V

A STIMULUS SUPPLEMENTAL APPROPRIATION OF $1.127 BILLION

[ANTI-RECESSION/LABOR INTENSIVE]

FOR EXISTING CONSTRUCTION AUTHORIZATIONS

				AUTHORIZATION	APPROPRIATION
GRANTS					
I Higher Education Act	Sec. 701(b)	Purposes of Sec. 771(a)(2)	Reconstruction and renovation of academic facilities to meet requirements of Architectural Barriers Act, health and safety standards mandated by law, and Rehabilitation Act, Sec. 504	$300M	$300M
	Sec. 721(b)			80M	80M
II Education of the Handicapped Act	Sec. 607		Reconstruction and renovation grants to local education agencies to meet the requirements of Architectural Barriers Act and Rehabilitation Act, Sec. 504	Such sums	300M
II Rehabilitation Act of 1973	Sec. 301(a)		Construction of public and nonprofit vocational rehabilitation facilities	Such sums	150M
V Library Services and Construction Act	Sec. 4(a)(2)		Construction of public library facilities	97M	97M
			Grant Total:		$927M
LOANS					
V Higher Education Act	Sec. 741(b)	Purposes of Sec. 771(a)(1)	Reconstruction and renovation of academic facilities to economize on the use of energy resources	$200M	$200M
			TOTAL:		$1.127B

Discussion:

An opportunity exists as a part of an economic and employment stimulus package to meet some specific needs. The only Congressional action needed to activate these construction activities is an appropriation. Appropriations for these programs will help counter the recession, will further stimulate the economy, and will help reduce unemployment.

Grant program authorities I and II will not require additional future expenditures of Federal, state and local funds, but meet a required one-time expenditure.

The appropriations for construction loans (V) will help economize energy resources and lessen institutional dependency on foreign fuels. Grant program authorities III and IV will provide for needed expansion in programs which serve the handicapped and the general public.

Funding of these authorities would provide assistance to public and private, nonprofit agencies providing needed public service. The mechanisms for dealing with these agencies have been specified in the respective authorizing legislation. The current "Public Works Act," however, does not provide such guidance.

X. POSTSECONDARY EDUCATION

Education Amendments of 1976

The Education Amendments of 1976 make a number of statutory revisions of significant assistance to postsecondary students and institutions. The major items include: the establishment under Title I of a new lifelong learning provision; modification of Title II to provide assistance to major research libraries; changes in Title IV, student assistance, including an increase in the Basic Educational Opportunity Grant maximum award; the addition of educational information centers; and the amendment of Title VII to include renovation and modernization to make facilities more energy efficient and to meet current health and safety standards.

The Act provides also that when appropriations for student assistance reach a certain level, additional funds must be appropriated for certain other parts of the Higher Education Act—a trigger mechanism. We have reservations about this mechanism and hope that it would not place a ceiling on student assistance provisions, which remain of the highest priority for postsecondary funding.

Recommendation. We recommend early appropriations for the lifelong learning provisions, education information centers, major research libraries, and the new reconstruction and renovation provisions under Title VII. Funding of Title VII would, in addition, provide the same benefits of stimulating employment as is proposed under the Public Works Employment Programs. In addition, it is essential that appropriations are sufficient to provide full entitlements for the increased maximum award under the Basic Educational Opportunity Program.

Veterans Education Assistance Act. In the closing hours of the 94th Congress, Public Law 94-502, the Veterans Education and Employment Assistance Act of 1976, was passed. One of the major aims of this Act is to clarify, codify, and strengthen the administration of educational benefits to prevent or reduce abuse. Unfortunately, several provisions of the Act place burdens on individuals and institutions which exceed the need for proper controls. While some of the burden is inherent in the Act itself, many of the problems result from the involved procedures established by the Veterans Administration (VA) to implement the changes in law. Institutions will be bogged down in paperwork and hurt by costs inflicted on them for compliance with requirements that may involve a relatively small number of veterans.

The provisions to be reconsidered are the new application of the "two-year period of operation rule" and the "85-15 percent ratio requirements" to degree granting institutions, and revised criteria for "unsatisfactory progress" and the "prohibition of educational assistance payments for courses not counted to satisfy graduation requirements."

The "two-year period of operation rule" specifies that the Veterans Administration shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an educational institution when such course has been in operation for less than two years. All tax-supported institutions and all nonprofit degree-granting institutions formerly were exempt from this requirement. The "two-year rule" has not been applied to branches and extensions of public institutions located outside the taxing jurisdiction and to branches and extensions of independent institutions located beyond normal commuting distance. Both public and independent institutions will now be restricted on locations where they might offer programs to meet special education needs, even though state authorities had recognized and approved the need to develop a new extension or branch program. In effect, this rule substitutes rigid criteria of location and duration for State Approving Agency judgment of program quality as required under the law. Although Congress might wish to impose additional approval criteria on branch campuses and extension centers, a rigid and blanket prohibition is not desirable. The rule, although technically applying only to VA authority to approve enrollments, actually preempts the approval function of the State Approving Agency.

The "85-15 rule" prohibits the approval of enrollment of any eligible veteran, not already enrolled, in any course for any period during which the Veterans Administration finds that more than 85 percent of the students enrolled in the course have all or part of their tuition, fees or other charges paid by the educational institution, by the Veterans Administration or by grants from any Federal program — primarily the Basic Educational Opportunity Grants (BEOG) and Supplemental Educational Opportunity Grants (SEOG), but not limited to them. The Administrator of the VA may waive the requirements of this subsection in whole or in part if he determines it to be in the best interest of the eligible veteran and the Federal government. This rule previously applied only to noncollegiate schools and courses but is extended to collegiate programs under the 1976 Act.

There is no logic to this rule. Control of program eligibility should be based on registration and the assessment of program quality. The arbitrary determination of a limit on the percentage of students because of their student aid funding source is wrong. Programs designed to meet the special needs of low-income students could be adversely affected by this rule. The rule forces an expensive, time-consuming, computational nightmare on all institutions. Large universities may be involved in computing the separate percentages of student enrollment (by student aid source) for hundreds of courses of study. Colleges with few veterans would be required to undertake extensive computational analyses of their programs, when it is obvious that the total enrollment would not violate the 85-15 ratio. While the Veterans Administration has provided a temporary waiver of the intricate computational requirements for schools with nominal VA-supported enrollments (less than 35 percent) and has also granted a temporary waiver on BEOG and SEOG recipients; it has not provided a satisfactory solution to the problem. BEOG and SEOG waivers expire on June 30, 1977. Schools with less than 35 percent VA-supported enrollments must certify on a continuing basis in accordance with VA schedules. All schools must make separate computations for branches and extensions and seek separate waivers for these facilities.

Under the "unsatisfactory progress criteria," this Act adds the requirement of student progress at a rate permitting graduation within the approved length of the course to the existing standards of grade point average and probationary rules. Determination of the veteran student's status rests with the Veterans Administration. The Administrator has specified that institutions will calculate the progress of each veteran student according to the following guidelines: where 15 credit hours per term is considered full time, a student is expected to graduate in a four-year period; where 12 credit hours per term is full time, a five-year period is allowable. Each time a veteran student fails to satisfactorily complete a course the school must make a determination whether s/he is eligible for continuing benefits. The following variables are used: (1) the total credit hours needed to graduate, including the number to be completed or otherwise made up; (2) the number of terms remaining based on the approved length of the course and the student's rate of pursuit; and (3) the maximum credit-hour load allowable per term based on school policy.

The Act adds a new provision regarding payment of educational assistance allowances. The addition prohibits payment for a course for which the grade is not used in computing requirements for graduation. This includes courses from which a student withdraws unless the VA Administrator finds there are mitigating cir-

cumstances. In implementing this portion of the statute, the Veterans Administration has specifically cited all nonpunitive grades and limited the schools' nonpunitive withdrawal period to 30 days. If an institution assigns nonpunitive grades to a veteran student at the end of a term or allows withdrawal beyond 30 days without penalty, the veteran student will be overpaid unless the institution appeals to the VA for a waiver.

The VA rules effectively limit institutional discretion in accepting veteran students and in determining withdrawal rules, grading standards and academic penalties. The institutions will have to incorporate numerous additions in their records systems or establish separate academic records systems for veteran students. These rules may create such burdens on institutions that they may voluntarily surrender their approval to train veterans, thereby denying potential opportunities for the veterans.

Recommendations

The "Veterans Education and Employment Assistance Act of 1976" continues patterns established in previous veterans education statutes. The approval criteria and the authority of the State Approving Agencies to evaluate and supervise programs of education remains constant. However, the authority of the states has been effectively modified by the Act making changes in the restrictions on the payments of VA benefits rather than directing the states to implement specific mandated academic standards and restrictions in their approval criteria.

These restrictions should be removed and the role of the Federal and state governments in Veterans Education clarified. Both the Senate and House Veterans Affairs Committees should be involved in a review among representatives of the states and the academic community to pursue ways for the states to resume full responsibility for academic evaluation and supervision of approved institutions. If a problem is apparent in one or more states, it should be dealt with individually in accordance with the provisions of each State Approving Agency contract. Additionally, the Veterans Administration must be restrained from rewriting the laws and intent of Congress through unilaterally prepared regulations. The State Approving Agencies and the academic community must be involved by the Veterans Administration in writing regulatory requirements.

Amendments to the Act should be sought in the following areas: (1) Extension of the two-year rule period of operation to branches and extensions of degree-granting institutions should be repealed. The recognition of need for such facilities and the authority to develop and operate such facilities should remain with state authorities. (2) The "85-15 percent ratio" should apply only to VA-supported veterans and should be based on total school enrollment.

The problem of the "unsatisfactory progress rule" is not one of law since the Act is not specific in this area. The problem is with the VA's implementation of the law. Unless abuses are evident, the determination of unsatisfactory progress should remain the prerogative of the school under the supervisory review of the State Approving agency.

The "prohibition of educational assistance payments for courses not counted to satisfy graduation requirements" was added to the statute to correct the major abuse of the veterans assistance program, the awarding of NC and other nonpunitive grades term after term to veteran students. The concept of "mitigating circumstances" does allow some leeway by the schools in exceptional cases. The fact is, however, this portion of the statute dictates the grading structure to be used for veteran students. Of special concern is the VA's attempt to limit drop-add periods to not more than 30 days for all schools. This condition should be removed immediately and the determination of a reasonable drop-add period restored to the schools.

If no changes in this legislation and/or the VA's implementation are forthcoming, we recommend that the VA assume all costs for implementation of the extensive record systems and clerical functions involved. Since all changes involved relate to the determinations of the Administrator to make educational assistance payments, either the VA should incorporate the necessary records in their system to review individual veteran applications or they should reimburse the schools for all costs incurred in implementing the Veterans Administration directives.